

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Sundance Beverage Company,)	
)	CASE NO. 5:12 CV 2676
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION AND</u>
)	<u>ORDER</u>
Cleveland Juice Products, Inc.,)	
)	
Defendant.)	
)	

The Court referred this case to Magistrate Judge Burke for general pre-trial supervision on October 26, 2012. Defendant was served with plaintiff's complaint in this diversity action alleging breach of contract and other causes of action in connection with the alleged non-payment of eight invoices for beverages and other items provided by plaintiff to defendant in the amount of \$122,504.37. However, defendant did not answer or otherwise respond to plaintiff's complaint and the Clerk entered default against the defendant. ECF 10.

Pursuant to Rule 55 of the Federal Rules of Civil Procedure, plaintiff seeks default judgment against defendant Cleveland Juice Products in the amount of \$122,504.37. In support of its motion, plaintiff filed a brief and the declaration John M. Scherzinger (Scherzinger), Credit Manager for plaintiff Sundance Beverage Company. ECF 8 and 8-3. In his declaration, Scherzinger states that the invoices issued by plaintiff for beverages and other products provided to defendant by plaintiff in the amount of \$122,504.37, which are attached to the complaint in this matter, have not been paid by defendant Cleveland Juice Products and are due and owing to plaintiff.

(5:12 CV 2676)

Magistrate Judge Burke issued a Report and Recommendation recommending that plaintiff's motion for default judgment be granted, concluding that the factual allegations in the complaint are sufficient to state a claim for relief as to the causes of action for which plaintiff seeks default judgment. Further, Magistrate Judge Burke recommends that judgment be entered against defendant in the amount of \$122,504.37, concluding that the documentation provided by plaintiff in the complaint and the declaration of Scherzinger provide a sufficient basis for determining damages without the need for an evidentiary hearing. ECF 12.

A copy of Magistrate Judge Burke's Report and Recommendation was mailed to defendant Cleveland Juice Products at its address of record on March 19, 2013.

Under the relevant statute:

[T] magistrate judge shall file [her] proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C).

No objections have been filed to Magistrate Judge Burke's report and recommendation. The failure to file written objections to a Magistrate Judge's report and recommendation constitutes a waiver of a *de novo* determination by the district court of an issue covered in the report. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985); *see United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

(5:12 CV 2676)

The Court has reviewed the Magistrate Judge Burke's well-reasoned Report and Recommendation and adopts the same. Accordingly, plaintiff Sundance Beverage Company's motion for default judgment (ECF 8) in the amount of \$122,504.37 against defendant Cleveland Juice Products, Inc. is GRANTED.

The Clerk shall mail a copy of this Memorandum Opinion and Order to defendant Cleveland Juice Products, Inc. at its address of record. The Court will separately publish a Judgment Entry.

IT IS SO ORDERED.

April 12, 2013
Date

s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge